

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

AMERICAN HEALTH CARE ASSOCIATION; MISSISSIPPI HEALTH CARE ASSOCIATION; GREAT OAKS REHABILITATION AND HEALTHCARE CENTER, LLC d/b/a GREAT OAKS REHABILITATION AND HEALTHCARE CENTER; COMMUNITY CARE OF VICKSBURG LLC d/b/a HERITAGE HOUSE NURSING CENTER; and MANSFIELD LONG TERM CARE, LLC d/b/a THE PAVILION AT CREEKWOOD,

Plaintiffs,

v.

THOMAS E. PRICE, M.D., *in his official capacity as Secretary of Health and Human Services*; and SEEMA VERMA, *in her official capacity as Administrator of the Centers for Medicare and Medicaid Services*,

Defendants.

Case No. 3:16-cv-00233-MPM-RP

**JOINT MOTION TO CONTINUE  
STAY OF PROCEEDINGS**

Defendants and Plaintiffs, by and through their respective undersigned counsel, respectfully move this Court for an order continuing the stay of proceedings in this action pending the completion of proposed rulemaking that bears upon the issues involved in this action and, if a final rule is issued, the taking effect of that new rule. In support of this joint motion, the parties state as follows:

1. On October 17, 2016, Plaintiffs commenced this action to seek declaratory and injunctive relief against a rule that Defendants had promulgated to prohibit skilled nursing facilities that participate in Medicare and nursing facilities that participate in Medicaid from entering into pre-dispute arbitration agreements with residents and patients at their facilities. Dkt. No. 1.

2. On November 7, 2016, the Court entered an order granting a preliminary injunction that bars the enforcement of that rule. Dkt. No. 44.

3. On January 5, 2017, Defendants filed a notice of appeal from the order granting a preliminary injunction. Dkt. No. 60. By agreement of the parties, the Court stayed further proceedings in this Court pending the outcome of Defendants' appeal (to which the U.S. Court of Appeals for the Fifth Circuit assigned case number 17-60005). Dkt. No. 62.

4. On June 2, 2017, the Fifth Circuit granted Defendants' motion for voluntary dismissal of their appeal. Dkt. No. 65.

5. On June 5, 2017, Defendants filed a notice of administrative action to inform the Court and the parties that Defendants had issued a Notice of Proposed Rulemaking that bears on the issues involved in this action. Dkt. No. 67. Specifically, the proposed rule would revise the rule that is the subject of this Court's preliminary injunction order. The Notice of Proposed Rulemaking, entitled *Medicare and Medicaid Programs; Revisions of Requirements for Long-Term Care Facilities: Arbitration Agreements*, was published in the Federal Register on June 8, 2017. *Id.*

6. Under the Notice of Proposed Rulemaking, public comments must be submitted within 60 days after the publication of the Notice in the Federal Register. *Id.* Attach. 1 at 1. Following the consideration of comments regarding the proposed rule, Defendants will decide whether to promulgate a new rule that eliminates or modifies the rule that is the subject of this action.

7. The parties have conferred and jointly agreed that further litigation of this action should be stayed until the completion of the rulemaking and, if a new rule is promulgated, through the date on which the new rule takes effect, because a new rule would likely moot some or all of the issues disputed in this action.

8. The Court has authority to enter the requested stay under Federal Rule of Civil Procedure 6(b) and as an exercise of its inherent authority to manage its docket. *See, e.g., N.Y. v. EPA*, 413 F.3d 3, 16 (D.C. Cir. 2005); *Atlanta Gas Light Co. v. Dep't of Energy*, 666 F.2d 1359, 1363 (11th Cir. 1982).

Wherefore, for the foregoing reasons, Plaintiffs and Defendants jointly move this Court for an order staying this action until the later of: (1) the conclusion of the rulemaking proceeding entitled *Medicare and Medicaid Programs; Revisions of Requirements for Long-Term Care Facilities: Arbitration Agreements*; or (2) the effective date of any final rule arising from that rulemaking proceeding. The parties will file a status report (a) if the rulemaking proceeding is completed without the issuance of a rule; or (b) upon the taking effect of a final rule issued in the rulemaking. During the period of the continued stay of proceedings requested herein, the Court's preliminary injunction of November 7, 2016, will remain in effect.

An appropriate proposed order accompanies this motion.

Dated: June 8, 2017

Respectfully submitted,

/s/ John L. Maxey

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CERTIFICATE OF SERVICE

I, W. Scott Simpson, Senior Trial Counsel, Department of Justice, hereby certify that I have electronically filed the foregoing Joint Motion to Stay Proceedings with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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I also certify that I have sent the foregoing document to the following non-ECF participants by United States Postal Service:

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Dated: June 8, 2017

/s/ W. Scott Simpson

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